



International Covenant on Civil and Political Rights

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Summary record of the first part (closed)** of the 2888th meeting

Held at Headquarters, New York, on Wednesday, 28 March 2012, at 3 p.m.

Chairperson: Ms. Majodina

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* All persons handling this document are requested to respect and observe its confidential nature.

** The summary record of the second part (public) of the meeting appears as document CCPR/C/SR.2888/Add.1.

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The meeting was called to order at 10.10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant *(continued)*

Concluding observations of the Human Rights Committee on the third periodic report of Guatemala (continued) (CCPR/C/GTM/CO/R.3)

1. **The Chairperson** invited the Committee to continue to review the draft text paragraph by paragraph.

Paragraph 11

2. **Mr. Kälin** said that the Rapporteur had already agreed that a reference to “violence and killings” should be added in the expression of concern.

3. *Paragraph 11, as amended, was adopted.*

Paragraph 12

4. **Mr. Kälin** said that the word “should” was more appropriate than “must” in the recommendation.

5. **Mr. Flinterman** said that a reference to making the Public Order Act consistent with international human rights standards should be added in the expression of concern in order to ensure symmetry with the recommendation.

6. *Paragraph 12, as amended, was adopted.*

Paragraph 13

7. **Mr. Iwasawa** said that the wording “should consider abolishing” might be preferable, as the State party was de facto a moratorium country. He would be interested to hear from the Secretariat about the Committee’s past practice in recommendations concerning abolition of the death penalty.

8. **Ms. Prophette-Pallasco** (Human Rights Officer, Office of the United Nations High Commissioner for Human Rights) said that various formulations had been used over the past three or four years in such recommendations: “abolish the death penalty”, “abolish the death penalty and accede to the Second Optional Protocol”, “take measures to abolish” and “consider abolishing”.

9. **Mr. Fathalla** said that the first part of the recommendation could be deleted, as the reference to acceding to the Second Optional Protocol would be sufficient.

10. **Mr. Flinterman** said that it would be preferable not to change the recommendation because, in most countries, accession to the Second Optional Protocol did not imply its immediate application of the Protocol in the domestic legal system. Often a further decision was also needed.

11. **Mr. Iwasawa** said that as Guatemala had a de facto moratorium, the Committee could use the wording “consider abolishing” or “officially abolish”.

12. **Mr. Rivas Posada** said that it might be advisable to refer both to consideration of the formal abolition of the death penalty and to the possibility of accession to the Second Optional Protocol to the Covenant. As abolition of the death penalty was not an obligation under the Covenant, it was appropriate to use the wording “consider abolishing”.

13. **Mr. Salvioli** said that Mr. Rivas Posada’s suggestion seemed to answer all concerns.

14. *Paragraph 13, as amended, was adopted.*

Paragraph 14

15. **Mr. Neuman** said that he would welcome clarification regarding the nature of the effective and periodic controls referred to in the recommendation.

16. **Mr. Salvioli** said that the national office in Guatemala of the High Commissioner for Human Rights had expressed concern at the high rate of homicides involving firearms. Current legislation apparently did not include any restrictions on the issuing of firearms licences to individuals. Perhaps the recommendation could be redrafted as “The State should place stricter limits on the issuing of firearms licences and on the possession of firearms by individuals”.

17. *Paragraph 14, as redrafted, was adopted.*

Paragraph 15

18. **Mr. Kälin** said that the reference to “diversion of resources” was not clear. The issue of the diversion of financial resources from the police to the army had been addressed by the proposed wording in brackets.

19. **Ms. Prophette-Pallasco** (Human Rights Officer, Office of the United Nations High Commissioner for Human Rights) said that concern had been expressed that police funds were being used for expenses related to the deployment of the armed forces in joint patrols.

20. **Mr. Kälin** said that in that case it was budgetary resources intended for the police that were being diverted.

21. **Mr. Flinterman** said that the reference in the last sentence of the recommendation to “persons involved in human rights violations” was very broad and could refer to persons who had been accused but not convicted.

22. **Mr. Salvioli** said that there was a serious problem of impunity in Guatemala, with almost no cases of prosecution and sentencing. Persons suspected of serious human rights violations, including crimes against humanity, were known to have returned to work for private security companies.

23. **Mr. Rivas Posada** said that the last sentence of the recommendation should be moved to the end of the recommendation in the following paragraph. Paragraph 15 referred to the Committee’s concern at the relationship between the police and army, especially in joint patrols, and the language should make it clear that it was the police who were responsible for coordination and control of such patrols.

24. **Mr. Salvioli** said that the reference to “private security companies” should be moved to the recommendation in paragraph 16, while retaining in paragraph 15 the reference to the fact that persons involved in human rights violations during the armed conflict should not participate in the joint patrols. A similar suggestion in the case of private security companies could be included in paragraph 16.

25. **Mr. Neuman** said that the final sentence could be amended to read “The State should take steps to prevent persons who committed human rights violations during the armed conflict from performing security functions”.

26. *Paragraph 15, as amended, was adopted.*

Paragraph 16

27. **Mr. Kälin** asked for clarification of the “inaccuracies” referred to in the final sentence of the recommendation.

28. **Ms. Prophette-Pallasco** (Human Rights Officer, Office of the United Nations High Commissioner for Human Rights) said that a private security company could be transferred or sold without the new owner having to undergo any process of verification. There were also problems with the licensing process for private security companies.

29. **Mr. Kälin** said that the recommendation could state that the Act did not provide sufficient controls, without going into the details.

30. **Mr. Salvioli** said that the reference to “inaccuracies” could be deleted. A reference to the lack of adequate controls was already included in the expression of concern.

31. *Paragraph 16, as amended, was adopted.*

Paragraphs 17 and 18

32. *Paragraphs 17 and 18 were adopted.*

Paragraph 19

33. **Mr. Flinterman** said that he would prefer a more general and positive formulation such as “ensure the inclusion of the protection of women against violence”. The reference to primary school curricula should be deleted, as it was not an appropriate topic for that level.

34. *Paragraph 19, as amended, was adopted.*

Paragraph 20

35. **Mr. Neuman** said that he had understood from the dialogue with the delegation that therapeutic abortion was already permitted.

36. **Mr. Salvioli** said that the Criminal Code of Guatemala currently made provision for abortion solely in cases where the mother’s life was endangered, but not for cases of rape or incest.

37. **Mr. O’Flaherty** said that exceptions for cases of rape or incest went beyond the issue of the right to life, which had been the basis for the Committee’s past practice, such as the recommendation made in the case of Poland (CCPR/C/POL/CO/6).

38. **Mr. Salvioli** said that the Committee had approved a similar recommendation for the Dominican Republic at the current session.

39. **Mr. Rivas Posada** said that the reference to an exception in the case of a threat to the life of the woman should be deleted if such exceptions were already permitted under Guatemalan legislation.

40. **Mr. O’Flaherty** said that the Committee needed to be sure of its position that the Covenant prevented the State from prohibiting abortion in cases of rape or incest. He wondered whether that claim would be made

under article 17 or as an extension of the rights set out in article 6.

41. **Mr. Neuman** said that perhaps Mr. O'Flaherty intended that the statement that victims of rape and incest might be forced to have recourse to an illegal abortion and thus put their lives at risk should be repeated in the recommendation, which would be consistent with the Committee's past recommendations.

42. **Mr. O'Flaherty** said that Mr. Neuman's proposal would allay his concerns.

43. **Mr. Salvioli** said that the issue of victims of rape or incest seeking a clandestine abortion and thus endangering their lives had not been raised during the dialogue with the delegation.

44. **Ms. Chanet** said that it was important for the Committee to remain consistent in its recommendations. However, it had gradually moved away from the wording used in some of its past recommendations on abortion.

45. **Mr. Flinterman**, supported by **Mr. Salvioli**, said that he would prefer not to amend the recommendation as similar language had been used in a recommendation for the Dominican Republic at the current session.

46. **Mr. Sarsembayev** said that as the Covenant did not explicitly refer to abortion, there was no legal basis for the Committee's recommendation. The recommendation could state that circumstances of rape or incest should be taken into consideration when a woman asked for an abortion or that the State party should review the general prohibition on abortions.

47. **Mr. O'Flaherty** said that the recommendation on abortion adopted in respect of the Dominican Republic did not follow the pattern of previous concluding observations.

48. **Ms. Chanet** said that the recommendation made in respect of Poland was not applicable to Guatemala because Poland did not prohibit abortion in cases of rape or incest.

49. **Mr. Salvioli**, supported by **Mr. Rivas Posada**, said that he understood that the Committee did not wish to set a precedent with regard to its general position on abortion. However, the recommendation was not intended to reflect the Committee's stance on abortion, but rather the dialogue held with the delegation in question. Past recommendations were not relevant to that dialogue.

50. **Mr. O'Flaherty** said he concurred that the concluding observations needed to be based on the dialogue with the delegation, but the Committee's concerns and recommendations should be founded on the Covenant and the Committee had not yet reached a decision as to whether access to abortion was covered by the Covenant. The language used in paragraph 13 of the concluding observations made in respect of Ireland (CCPR/C/IRL/CO/3) could be adapted to the recommendation for Guatemala.

51. **Mr. Sarsembayev** said that the disagreement could be resolved by removing the reference to article 17 of the Covenant.

52. **Mr. Salvioli** said that Mr. O'Flaherty's suggestion was too general and would make the follow-up process difficult. Committee members had repeatedly expressed their concerns on the issue of abortion and the State party would be surprised to find no reference to that issue in the concluding observations. The Committee should decide whether to keep the paragraph or delete it.

53. **Mr. O'Flaherty** said that he did not wish to delete that important paragraph, but had proposed what he considered to be a consensus solution.

54. **Mr. Iwasawa** said that the paragraph could be retained with the amendment proposed by Mr. Neuman.

55. **Mr. O'Flaherty** suggested adding the phrase "in order to avoid forcing women to seek clandestine operations such as in cases where" after "prohibition of abortion" in the first sentence of the recommendation paragraph. Lastly, he asked that the reference to article 17 be removed.

56. **Ms. Chanet** agreed to the redrafting of the text, but asked that the reference to article 17 be replaced by a reference to article 3.

57. *Paragraph 20, as amended, was adopted.*

Paragraph 21

58. *Paragraph 21 was adopted with minor drafting changes.*

Paragraph 22

59. **Ms. Chanet** said that the recommendation paragraph was too long and vague for effective follow-up by the State party.

60. *Paragraph 22 was adopted, subject to agreed redrafting.*

Paragraph 23

61. **Mr. Kälin** suggested that the second sentence of the paragraph be changed to “concerned about the lack of reliable records of alleged cases of torture”, as that would address the problem of impunity. The Committee’s main concern was that those records were kept, rather than which body was charged with keeping them. The second sentence of the recommendation paragraph should be amended by replacing “any act” with “all cases or allegations” and inserting “are registered,” between “treatment” and “is prosecuted”.

62. *Paragraph 23, as amended, was adopted.*

Paragraph 24

63. **Mr. Kälin** suggested that the second sentence be modified to read “minors are detained together with adults” as the Covenant did not prohibit the detention of minors in adult prisons as long as they were held separately from adult detainees. The word “standards” should be replaced by “measures” in the last sentence of the recommendation, as it was not a question of standards, but of actions.

64. *Paragraph 24, as amended, was adopted.*

Paragraphs 25 and 26

65. *Paragraphs 25 and 26 were adopted.*

Paragraph 27

66. **Mr. O’Flaherty**, further to Mr. Neuman’s request that the final sentence of the recommendation be amended to bring it into line with similar recommendations made by the Committee in the past, suggested that it be changed to “should take appropriate and all due account of decisions”.

67. *Paragraph 27, as amended, was adopted.*

Paragraph 28

68. *Paragraph 28 was adopted.*

Paragraph 29

69. **Mr. Salvioli** said that reference should be made to paragraphs 7, 21 and 22.

70. *Paragraph 29, as amended, was adopted.*

Paragraph 30

71. **Mr. Salvioli** said that, in the light of the complex situation in the State party, he considered that it was reasonable to set the date for the submission of the next periodic report for 2016.

72. *Paragraph 30, as amended, was adopted.*

73. *The draft concluding observations of the Human Rights Committee on the third periodic report of Guatemala as a whole, as amended and subject to agreed redrafting,, were adopted.*

74. **The Chair** reminded country rapporteurs to try to limit the concluding observations to a maximum of 25 paragraphs.

The closed part of the meeting rose at 4.40 p.m.